

STATE OF MICHIGAN
COURT OF APPEALS

In re K. MOREFIELD, Minor.

UNPUBLISHED

July 18, 2017

No. 337411

Arenac Circuit Court

Family Division

LC No. 15-012943-NA

Before: SERVITTO, P.J., and MURRAY and BORRELLO, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's order terminating her parental rights to her minor child. The order was based upon MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), MCL 712A.19b(3)(c)(ii) (conditions other than those that led to adjudication continue to exist), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm). For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

On April 29, 2015, petitioner initiated child protective proceedings alleging that respondent-mother and KM's father were involved in a domestic violence incident in Ohio, and that the couple remained in an abusive relationship. The petition alleged that respondent travelled to Arenac County, Michigan and left KM with nonrelative friends. According to the petition, the friends allowed KM to visit the home of respondent's mother, who had a history of substance abuse and whose own children had been removed by child protective services (CPS). Petitioner alleged that KM was in an unsafe and unkempt home environment.

Respondent admitted that she did not have housing and could not provide proper custody at the preliminary hearing and adjudication. The court took jurisdiction over KM. Petitioner formulated a parent-agency agreement that set forth goals for reunification. Ultimately, petitioner requested termination for respondent's failure to make progress on the reunification plan. After initially denying the request to proceed with termination, the court authorized a termination petition on September 15, 2016 and a termination hearing was held on November 17, 2016.

At the termination hearing, caseworker Amie Parkinson testified that initial concerns in the case were employment, housing, domestic violence, and inappropriate relationships. Parkinson reported that respondent had relationships with several different men throughout the

case, and that she would “never be honest about them.” She warned respondent that KM could not have contact with a man named Eilf that respondent eventually married. Parkinson added that Eilf admitted that he also had an outstanding warrant for his arrest in Texas for failure to comply with probation. She asserted that respondent married Eilf in February 2016 despite knowing his criminal history. Despite her stated intention to divorce Eilf, Parkinson explained that respondent had “not followed through with the divorce.” Parkinson asserted that she also had concerns that respondent became involved with an ex-boyfriend who had previously sexually assaulted respondent. She asserted that the housing respondent secured was adjacent to Butzin’s residence, and that respondent relied on him for support and transportation.

Parkinson related that respondent had secured employment at a Little Caesars in Standish, but was let go in February 2016. She added that respondent found employment at another Little Caesars in Bay City, but was also fired from that position. According to Parkinson, respondent attended a “majority” of parenting time visits but was only “sometimes” prepared with childcare essentials. Parkinson also asserted that respondent stopped attending her mental health treatment sessions in July of 2016, and that her counselor was unable to make contact with her. Parkinson opined that overall, respondent did not benefit from the services provided and was not honest with service providers.

Caseworker Josett Gracey testified that she took over respondent’s case from Parkinson. Gracey reported that respondent was still married to Eilf, and that respondent had reported that she suffered a concussion when he pushed her down a flight of stairs. According to Gracey, respondent no longer wanted to divorce Eilf because she believed that she “might as well stay with him since she’s not getting [KM] back.” Gracey explained that respondent’s housing was inappropriate because she lived with Eilf, which was not an appropriate situation because of the couple’s domestic violence issues. Gracey added that respondent lied by telling her that she was still employed at “Orchard Bay” when she had actually been fired.

Central Michigan District Health Department nurse Kelley Potocki testified that respondent was twice referred to her for in-home visitation and assistance. Potocki discharged respondent from the program after each referral because of noncompliance. Bay Area Women’s Center therapist Jeanne Yonke testified that she had provided counseling services to respondent related to domestic violence. Yonke agreed that respondent was cooperative throughout the counseling process. But Yonke could not offer any insight on whether respondent benefitted from the therapy and support groups.

Respondent asserted that she was fired from her job at “Orchard Bay” because she missed a training day when she was ill and went to the hospital. She asserted that she was taking her medications and that it was safe for KM to be with her because she “got rid of a lot of negative people.” She asserted that she was ready to divorce Eilf and explained that she only stayed with him because she needed “somebody to talk to” about her situation. Respondent expressed plans to rent her own home and find employment soon. She admitted that she had “not completely” complied with the service plan.

The trial court determined that clear and convincing evidence existed to terminate respondent’s parental rights under MCL 712A.19b(3)(c)(i), (c)(ii), (g) and (j). The court also determined that termination was in KM’s best interests. This appeal ensued.

II. ANALYSIS

Respondent argues that the trial court erred in finding statutory grounds for termination. The trial court's decision that a ground for termination of parental rights has been proved by clear and convincing evidence is reviewed for clear error. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id.* at 296-297.

Under MCL 712A.19b(3)(g), a court can terminate parental rights if "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." The trial court determined that termination under this provision was appropriate because respondent did not maintain employment, appropriate housing, or appropriate relationships, and did not indicate anything that gave the court confidence that she would do so in the future.

Respondent maintains that the court clearly erred because she established that she could provide appropriate care, presenting testimony that she planned to rent a house and find employment. But these goals were entirely aspirational; respondent demonstrated no durable progress on maintaining appropriate housing or employment throughout the case. Indeed, two different Little Caesars locations had fired respondent, and she lost her job at a nursing home. Respondent also lacked appropriate housing. During the course of the case, respondent married a man that she knew had a criminal conviction related to causing harm to a child. Petitioner also adduced evidence that respondent's husband perpetrated domestic violence by pushing respondent down a stairwell. Respondent's housing was not appropriate for her child insofar as it would expose the child to domestic violence and the potential of harm at the hands of respondent's husband.

Respondent asserts that the court should have given her another chance to see if she would divorce her husband and thereby remedy the danger that the relationship posed to her and her child. Indeed, respondent testified that she was ready to divorce her husband and explained that the reason she had not yet done so was because she needed somebody to talk to about her situation. However, according to the caseworker, respondent had expressed that she no longer wanted a divorce because she believed that she might as well stay with her husband since she thought it unlikely that the court would return her child to her custody. Also, respondent does not explain why the court should have waited to see if she would follow through on filing for divorce. Respondent admitted that she had already filed for divorce once but did not follow through on the matter and missed a court date. Respondent's abandoned effort to divorce her husband would not warrant the court waiting longer to see if respondent would actually follow through with a divorce proceeding and maintain a safe environment for her and her child.

Respondent also argues that the court did not allow sufficient time for her to demonstrate progress in her service plan. However, respondent had 19 months in which to demonstrate progress and failed to do so. Respondent did not make significant strides in addressing the trial court's concerns. She was discharged twice from receiving services from a public health nurse,

stopped seeing her mental health counselor, could not maintain employment or suitable housing, and married a man that she knew had a criminal conviction related to harming a child.

In sum, the trial court did not clearly err in finding grounds for termination under MCL 712A.19b(3)(g). Given that there was at least one ground for termination, we need not address the additional grounds for termination identified by the trial court. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

Finally, respondent asserts that the trial court clearly erred when it determined that terminating respondent's parental rights was in the child's best interests.

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's decision regarding the child's best interests is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

In this case, the trial court expressed that respondent loved her child but either "doesn't have the capacity to appreciate what's best for [KM] or simply places . . . [KM's] interest at a far lower level than other interests, including relationships with men who are harmful to both [respondent] and others." The court also determined that respondent was unable to rectify the conditions that brought the matter to petitioner's attention, including housing, employment, parenting skills, and "decent relationships," which the court explained was the "most concerning" aspect of the case. The court also held that respondent had a weakened bond with KM from the time spent outside of her care, and that KM was "flourish[ing]" in foster care and needed permanence and stability. The court found that the evidence was "overwhelming" in favor of determining that termination was in KM's best interests.

The trial court did not clearly err by determining that termination was in KM's best interests. Here, respondent was unable to rectify the conditions that led to the petition. While respondent had a bond with KM, she was unable to meet KM's needs; she could not provide a safe and stable home environment and could not obtain an income to support KM. In addition, respondent consistently became involved in destructive relationships and her actions did not indicate that she put KM's needs before her own. Furthermore, KM was thriving in foster care and he needed permanency and stability that respondent could not provide. The court properly considered factors such as respondent's bond with the child, the respondent's parenting ability, the child's need for permanence and stability, the advantages of a foster home over the respondent's home, the presence of domestic violence, and respondent's noncompliance with services. In sum, the trial court did not clearly err in finding that termination was in the child's best interests.

Affirmed.

/s/ Deborah A. Servitto
/s/ Christopher M. Murray
/s/ Stephen L. Borrello